IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 5.07.2007

CORAM

THE HONOURABLE MR.JUSTICE P.K.MISRA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

H.C.P.Nos.260, 261, 265, 268,
269, 270, 271 and 272/2007

Ulaganathan .. Petitioner in HCP No.260/2007

Ranjitham .. Petitioner in HCP No.261/2007

Suba .. Petitioner in HCP No.265/2007

Maya .. Petitioner in HCP No.268/2007

Hamsa .. Petitioner in HCP No.269/2007

Bogapathy .. Petitioner in HCP No.270/2007

Samikannu .. Petitioner in HCP No.271/2007

Mayawathi .. Petitioner in HCP No.272/2007

Vs.

1.Government of Tamil Nadu,
rep. By the Secretary,
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.Commissioner of Police,
Egmore, Chennai - 8. .. Respondents

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For Petitioner : Mr.A.Shiv Kumar

For Respondents: Mr.Babu Muthu Meeran, Addl.PP.

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PRAYER: Petitions filed under Article 226 of the Constitution of India for issue of Writ of Habeas Corpus directing the respondents to produce the detainees before this Court and set them at liberty.

Writ of Habeas Corpus directing the respondents to produce the detention

1. Samukutty @ Murugan s/o Ulaganathan aged about 28 years resident of NO. 2/37 Anna Street, Kelathipettai 600 069

2. Madan S/o Late Anbu aged about 28 years resident of 2/108 Nagarathinam Pillai Street, Kelathipettai 600 069.

3. Mega @ Meganathan s/o Late Deivasigamani aged about 28 years a resident of NO. 3/30 Nagarathinam Pillai Street, Kelathipettai 600 069

4. Johnson s/o Sundaram aged about 27 years a resident of NO. 2/54 Anna Street Kelathipettai 600 069.

5. Babu @ Gundubabu S/o late Chinnapayan aged about 32 years a resident of NO. 2/54 Anna Street Kelathipettai 600 069

6.Babu @ Bogapathy babu s/o Bogapathy aged about 28 years a resident of NO. 2/5 Nagarathinam Pillai street, Kelathipettai 600 069

7. Rajan S/o Samikkannu aged about 38 years a resident NO. 1/152 Gandhi Street Kelathipettai 600 069

8. Ashok S/o late Chinnathambi aged about 23 years a resident NO. 2/134 Nagarathinam pillai street, Kelathipettai 600 069 presently all confined at the Central Prison, Puzhal Chennai before this Hon'ble Court by calling for the records dated 10.01.07 in BDFGISSV NOS. 6 of 2007 NO. 2/07; 3/07; 8/07; 4/07; 7/07 5/07 and 9/07 respectively quash the same and set the detainees at liberty.

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C O M M O N - O R D E R

R.BANUMATHI, J.

In these HCPs, the relatives of the detainees challenge the detention orders whereby the detainees were detained under Act 14/1982, branding them as "Goonda" as contemplated under Section 2(4) of the Tamil Nadu Prevention of Dangerous activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral

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Traffic Offenders, Sand Offenders, Slum Grabbers and Video Pirates Act, 1982 [Tamil Nadu Act 14 of 1982].

2.All the detainees are allegedly involved in adverse case Cr.No.718/2006, T-13 Kunrathoor P.S. That apart, some of the detainees had come to adverse notice in other cases also. Detenu Madhan is alleged to be involved in other T.13. Kunrathoor Police Station Cases, Cr.No.721/2006 of T-13 Kunrathoor P.S. Detenus Mega @ Meganathan and Johnson, Babu @ Gundubabbu, Babu @ Bogapathy are alleged to be involved in Cr.No.189/2006; Detenu Ranjan is alleged to be involved in Cr.No.1024/2006; Detenu Babu @ Bogapathy Baby is also alleged to be involved in Cr.No.60/2005.

3.The ground case relates to the occurrence on 18.12.2006, on which date, police are alleged to have proceeded to apprehend the accused concerned in Cr.No.718/2006. At that time, the detainees are alleged to have brandished their knives and threatened the police personnel and are also alleged to have threatened the public and threatening to hurl country bombs and are alleged to have created terror and panic at the spot. On the complaint lodged by the police personnel, the ground case was registered in Cr.No.722/2006 under Sections 147, 148, 332 and 506 (2) IPC r/w Sec.3 and 4 of Indian Explosives Act, and Sec. 25 of Arms Act.

4.Even though several contentions were raised and argued as well, the learned Counsel for the detainees mainly projected that even though the detainees had sent pre-detention representation on 31.12.2006 and the Detaining Authority had received the same, and called for remarks, yet the Detaining Authority has not considered the representation nor has he referred to the same nor awaited the report of the pre-detention representation, which indicates non-application of mind on the part of the Detaining Authority. In support of his contention, the learned Counsel placed reliance upon 2006(1) LW Crl.293 [P.M.S.Mohiadeen Sahib Vs. State of Tamil Nadu and another] and 1999(2) CTC 490 [T.M.Syed Ali and another Vs. State of Tamil Nadu and others].

5.The learned Addl. Public Prosecutor had taken us through the grounds of detention and placing relevant files would submit that pre-detention representation was duly considered and the Detaining Authority had called for report from the Deputy Commissioner, Ambattur and the Detaining Authority did take into consideration pre-detention representation. The learned Addl. Public Prosecutor further submitted that the report only disclosed that the averments in the representation is false and in that view of the matter, non placing of report before the Detaining Authority would not vitiate the detention order passed on 10.01.2007.

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6.We have perused the copy of the representation dated 31.12.2006. The detainees have raised several contentions interalia pointing out the group rivalry in the local body elections and pendency of cases against the opposite party. The pre-detention representation dated 31.12.2006 was received by the office of Detaining Authority on 04.01.2007. On 05.01.2007, Detaining Authority did call for a report from the Deputy Commissioner Ambattur. Inspector of Police, Sponsoring Authority Kunrathur P.S. submitted his report on 13.01.2007, which was processed through Assistant Commissioner [on 16.01.2007] and Deputy Commissioner on 25.01.2007. Before the report was placed before the Detaining Authority, the impugned detention orders were passed.

7.The enquiry report elaborates upon the group rivalry of both groups in an election dispute and series of other disputes. On these main factors, the subjective satisfaction is based. The relatives of the detainees made pre-detention representation on 31.12.06, touching on the group rivalry and other series of disputes between the parties. Even though there was no reference about the pre-detention representation, having received the pre-detention representation and called for the report, without considering the same, the Detaining Authority has passed the detention orders, which in our view has the effect of vitiating the detention orders.

8.Now let us consider the decision of this Court on pre-detention representation. Similar factual situation arose in 2006(1) LW Crl. 39 [Mohana Vs.State, rep. By Secretary to Government, Prohibition and Excise Department and another]. Pre-detention representation was received by the Detaining Authority. Remarks were also called for on it and without passing any order on the pre-detention representation, the Detaining Authority passed the order of detention. Quashing the detention order, this Court has held as follows :-

> "5.Having considered the pre-detention representation dated 22.09.2004 and having called for the remarks on it, we are at loss to understand as to how the Detaining Authority hastened to pass the detention order dated 25.09.2004 without getting the remarks and without taking a decision on the pre-detention representation. This shows that the Detaining Authority has not taken a decision on the pre-detention representation and he has not chosen to reflect the same in the grounds of detention and as such, it is an illegality as held by this Court in the decisions in Mani Vs.State of Tamil Nadu, rep. By the Secretary to Government, Prohibition & Excise Department, Fort St.George, Chennai & Another 2000(1) MWN (Cr.) 279 = 2000 (1) LW Crl.452 and Suresh Kumar V. State 2004 MLJ Cri.733 = 2004 (1) LW Crl. 394".

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It is the duty of the Detaining Authority to consider the pre-detention representation of the detainees and find out as to whether there are any bonafides. While arriving at subjective satisfaction, the Detaining Authority has to consider pre-detention representation sent by the relatives and shall come to the conclusion on the representation. Having called for the report from the authorities, Detaining Authority without waiting for the report, hastened to pass the detention orders. In our view, the report might have persuaded the Detaining Authority not to pass an order of detention.

9.In 1999 (2) CTC 490 [T.M.Syed Ali and another Vs. State of Tamil Nadu and others], mother and father of the detainees in the respective case represented on 08.08.1998 and 11.08.1998 denying the alleged incident dated 2.08.1998. The Detaining Authority has not considered the same while passing the detention order nor had the Detaining Authority furnished copy to detainees. Quashing the detention orders, First Bench of this Court has held as follows :-

> "The question that has to be decided is as to whether this is a relevant material to consider before arriving at subjective satisfaction whether or not to issue an order of detention. In our considered view, the aforesaid material is a crucial material which has to be taken into consideration for deciding as to whether to pass or not to pass an order of detention. It may be that the Detaining Authority may after due consideration of the aforesaid material still comes to a conclusion that this is a fit case for passing an order of detention after finding that the case made out in the representation and the telegram as concocted and false. However, it cannot be said that the said documents are immaterial for arriving at the aforesaid subjective satisfaction. It may be that the Detaining Authority might have been persuaded on consideration of the aforesaid documents on hold that the presence of the petitioners at the time of the alleged offence on 2.8.1998 becomes doubtful and might have been persuaded not to pass an order of detention issued by the 2nd respondent suffers from vice of non application of mind on account of the failure to consider the material piece of evidence and hence the same is liable to be set aside on the ground".

10.In 2006(1) LW Crl.293 [P.M.S.Mohiadeen Sahib Vs. State of Tamil Nadu and another], detenu has made pre-detention representation on 04.07.2005, which was received by the Superintendent, Central Prison, who forwarded the same to Law Minister, Government of Tamil Nadu on 05.07.2005 itself. In the said case, Court has held that the Detaining Authority ought to have verified the earlier representation and passed the order after due consideration. We are satisfied that the Detaining Authority failed to consider these relevant aspects and the

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detenu is entitled to succeed. In the said order, Court has referred to the following cases - AIR 1975 SC 775 [John Martin Vs. State of West Bengal]; 2004 SCC Criminal 618 [A.C.Razia Vs. Govt. of Kerala and 1999 (2) CTC 490 [T.M.Syed Ali Vs.State of Tamil Nadu].

11.In the light of the above principles, we are of the view that pre-detention representation sent by the relatives of the detainees on 30.12.2006 was received by the Detaining Authority and the Detaining Authority did call for report. Yet, without referring to the pre-detention representation or waiting for the report, the detention orders were clamped on the detainees. Having regard to these circumstances, we find that detention orders are liable to be set aside.

12.For the foregoing reasons, the detention orders are set aside and these petitions are allowed. The detenus are directed to be set at liberty forthwith unless they are required in connection with any other case.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

1.The Secretary to Government of Tamil Nadu,
Prohibition and Excise Department
Fort St.George, Chennai-9.

2.Commissioner of Police,
Egmore, Chennai - 8.

3.The Public Prosecutor, High Court, Madras

+8ccs to Mr. A. Shiva Kumar, Advocate sr no. 40433 to 40440

mj(co)
nm(11.07.07)

H.C.P.Nos.260/2007 batch

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